

person aggrieved, the person so aggrieved may apply to the county commissioners of said county, who shall, upon proof of the notice aforesaid, appoint three discreet and sound judging freeholders of said county, not related to either party, who shall have full powers to hear and determine all matters in dispute connected with said fence.

4. And the said freeholders, if they, or a majority of them, find that the making or repairing of said fences is for the mutual advantage and protection of both parties, shall apportion to each his just proportion thereof, and mark and bound the same; and shall make out their award in writing, under their hands and seals, verified by affidavit, requiring the recusant party to make or repair his part of said fence, by a day to be specified in the award, and also giving their estimate of the cost of making or repairing such fence, and shall deliver a copy of said award to each party interested, or his tenant, overseer, or other representative, in case one of the parties is a non resident of the county.

5. And if the party thus required to make or repair his part of said fence, shall fail to do so within the time specified, it shall be lawful for the other party interested to make or repair the same at an expense not exceeding that specified in the award, and as soon as he shall have made or repaired said fence, and have obtained the certificate of the freeholders aforesaid, or a majority of them, that he is entitled to the amount specified in the award, or any part thereof, he shall be entitled to recover the amount, so expended, from the owner of said fence, as other debts are now recovered; and if the owner of such fence is a non-resident of said county, the party so making or repairing, shall be entitled to judgment against him, in the Circuit Court or before a justice of the peace of said county, as the case may be, and the serving of the summons in such suit upon the tenant, overseer, or other representative, shall be a sufficient service of such writ upon the owner.

6. But if the said freeholders shall find that the said fence, or any part thereof, the making or repairing of which is sought to be enforced, would be of no use or benefit to the party refusing,